

103D CONGRESS
1ST SESSION

H. R. 3481

To provide participants in private pension plans which were terminated before September 1, 1974, the nonforfeitable pension benefits which were lost by reason of the termination, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 9, 1993

Mr. ROEMER (for himself, Mr. SAWYER, and Mr. OBERSTAR) introduced the following bill; which was referred to the Committee on Education and Labor

A BILL

To provide participants in private pension plans which were terminated before September 1, 1974, the nonforfeitable pension benefits which were lost by reason of the termination, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Pension Restoration
5 Act of 1993”.

6 **SEC. 2. DEFINITIONS.**

7 For purposes of this Act—

1 (1) STATE; UNITED STATES.—The terms
2 “State” and “United States” have the meanings set
3 forth in paragraph (10) of section 3 of the Employee
4 Retirement Income Security Act of 1974 (29 U.S.C.
5 1002).

6 (2) EMPLOYER; PARTICIPANT; BENEFICIARY;
7 NONFORFEITABLE; DEFINED BENEFIT PLAN.—The
8 terms “employer”, “participant”, “beneficiary”,
9 “nonforfeitable”, and “defined benefit plan” have
10 the meanings set forth in paragraphs (5), (7), (8),
11 (19), and (35), respectively, of section 3 of the Em-
12 ployee Retirement Income Security Act of 1974 (29
13 U.S.C. 1002).

14 (3) EARLY TERMINATED PLAN.—The term
15 “early terminated plan” means a defined benefit
16 plan—

17 (A) which is described in subsection (a) of
18 section 4 of the Employee Retirement Income
19 Security Act of 1974 (29 U.S.C. 1003) and is
20 not described in subsection (b) of that section,
21 and

22 (B) the termination date of which (as de-
23 termined by the Corporation) was before
24 September 1, 1974.

1 (4) QUALIFIED PARTICIPANT.—The term
2 “qualified participant” means an individual who—

3 (A) was a participant in an early termi-
4 nated plan maintained by an employer of such
5 individual, and

6 (B) as of immediately before the termi-
7 nation of the plan had a nonforfeitable right to
8 benefits under the plan.

9 (5) QUALIFIED SPOUSE.—The term “qualified
10 spouse” means an individual who is the widow (with-
11 in the meaning of section 216(c) of the Social Secu-
12 rity Act (42 U.S.C. 416(c)) or the widower (within
13 the meaning of section 216(g) of such Act (42
14 U.S.C. 416(g)) of a qualified participant.

15 (6) CORPORATION.—The term “Corporation”
16 means the Pension Benefit Guaranty Corporation.

17 **SEC. 3. ENTITLEMENT TO ANNUITY.**

18 (a) ENTITLEMENT OF QUALIFIED PARTICIPANT.—

19 (1) IN GENERAL.—A qualified participant is en-
20 titled, upon approval by the Corporation under this
21 Act of an application therefor, to an annuity payable
22 by the Corporation and computed under section
23 4(a).

1 (2) COMMENCEMENT.—The annuity of a quali-
2 fied participant commences on the day after the
3 later of—

4 (A) the effective date set forth in section
5 12, or

6 (B) the date on which the qualified partici-
7 pant attains 65 years of age.

8 (3) TERMINATION.—The annuity of a qualified
9 participant and the right thereto terminate at the
10 end of the last calendar month preceding the date of
11 the qualified participant's death.

12 (b) ENTITLEMENT OF QUALIFIED SPOUSE.—

13 (1) IN GENERAL.—A qualified spouse is enti-
14 tled, upon approval by the Corporation under this
15 Act of an application therefor, to an annuity payable
16 by the Corporation and computed under section
17 4(b).

18 (2) COMMENCEMENT.—The annuity of a quali-
19 fied spouse of a qualified participant commences on
20 the latest of—

21 (A) the effective date set forth in section
22 12,

23 (B) the first day of the month in which the
24 qualified participant dies, or

1 (C) if the qualified participant dies before
2 attaining 65 years of age, the first day of the
3 month in which the qualified participant would
4 have attained such age but for the qualified
5 participant's death.

6 (3) TERMINATION.—The annuity of a qualified
7 spouse and the right thereto terminate at the end of
8 the last calendar month preceding the date of the
9 qualified spouse's death.

10 **SEC. 4. COMPUTATION OF ANNUITY.**

11 (a) QUALIFIED PARTICIPANT'S ANNUITY.—The an-
12 nuity computed under this subsection (relating to a quali-
13 fied participant) in connection with any early terminated
14 plan is equal to the excess (if any) of—

15 (1) the product derived by multiplying \$75 by
16 the number of years of service of the qualified par-
17 ticipant under the plan, over

18 (2) the annual amount which would be nec-
19 essary to amortize in level amounts over 10 years
20 the sum of—

21 (A) any lump sums paid to the qualified
22 participant from the plan in connection with the
23 termination, and

24 (B) the actuarial present value (deter-
25 mined, as of the effective date set forth in sec-

tion 12, under the assumptions used by the Corporation for purposes of section 4044 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1344)) of pension benefits under the plan (if any) to which the qualified participant retains a nonforfeitable right under the plan.

(b) QUALIFIED SPOUSE'S ANNUITY.—The annuity computed under this subsection (relating to the qualified spouse of a qualified participant) in connection with an early terminated plan is equal to the excess (if any) of—

(1) 50 percent of the amount determined under paragraph (1) of subsection (a) in connection with such qualified participant, over

(2) the annual amount which would be necessary to amortize in level amounts over 10 years the sum of—

(A) any lump sums paid to the qualified spouse from the plan in connection with the termination, and

(B) the actuarial present value (determined, as of the effective date set forth in section 12, under the assumptions used by the Corporation for purposes of section 4044 of the Employee Retirement Income Security Act of

1 1974 (29 U.S.C. 1344)) of pension benefits
2 under the plan (if any) to which the qualified
3 spouse retains a nonforfeitable right under the
4 plan.

5 **SEC. 5. APPLICATIONS.**

6 (a) REQUIREMENTS.—An application for an annuity
7 under this Act in connection with an early terminated plan
8 shall be approved if—

9 (1) the application includes evidence sufficient
10 to establish that the applicant is a qualified partici-
11 pant or qualified spouse in connection with such
12 plan, or

13 (2) the evidence included in the application, to-
14 gether with such evidence as the applicant may re-
15 quest the Corporation to consider pursuant to sub-
16 section (c), establishes that the applicant is a quali-
17 fied participant or a qualified spouse in connection
18 with such plan.

19 (b) APPLICATION FORMS.—The Corporation may by
20 regulation prescribe application forms which may be used
21 by applicants for purposes of subsection (a). Any such
22 forms prescribed by the Corporation shall be made avail-
23 able to the public by the Corporation.

24 (c) SPECIFIC MATTERS.—In considering applications
25 for annuities under this Act, the Corporation shall con-

1 sider, on the request of an applicant or the applicant's
2 representative, in addition to any other relevant evi-
3 dence—

4 (1) a comparison of employment and payroll
5 records which were maintained under chapter 21 of
6 the Internal Revenue Code of 1986 (relating to Fed-
7 eral Insurance Contributions Act) or under title II
8 of the Social Security Act (42 U.S.C. 401 et seq.)
9 with records maintained by the Internal Revenue
10 Service relating to the qualification status of trusts
11 forming part of a stock bonus, pension, or profit-
12 sharing plan under part I of subchapter D of chap-
13 ter 1 of the Internal Revenue Code of 1986 (relating
14 to pension, profit sharing, stock bonus plans, etc.),
15 and

16 (2) records maintained under the Welfare and
17 Pension Plans Disclosure Act of 1958.

18 (d) PROCEDURES FOR INITIAL DETERMINATIONS.—

19 (1) IN GENERAL.—Except as otherwise pro-
20 vided in this subsection, in making initial determina-
21 tions regarding applications for annuities under this
22 Act, the Corporation shall follow the procedures pre-
23 scribed by the Corporation for—

24 (A) initial determinations of benefit entitle-
25 ment of participants and beneficiaries under

1 plans to which section 4021 of the Employee
2 Retirement Income Security Act of 1974 (29
3 U.S.C. 1321) applies, and

4 (B) determinations of the amount of guar-
5 anteed benefits of such participants and bene-
6 ficiaries under title IV of such Act (29 U.S.C.
7 1301 et seq.).

8 (2) NOTICES OF DENIAL.—The Corporation
9 shall send any individual whose application under
10 this Act is denied by the Corporation pursuant to an
11 initial determination a written notice of the denial.
12 Such notice shall include the reason for the denial
13 and shall set forth the procedures required to be fol-
14 lowed in order to obtain review under this Act.

15 **SEC. 6. ADMINISTRATIVE APPEALS.**

16 (a) IN GENERAL.—Any individual whose application
17 for an annuity under this Act is denied pursuant to an
18 initial determination by the Corporation is entitled to—

19 (1) a reasonable time, but not less than 60 days
20 after receipt of the written notice of denial described
21 in section 5(d)(2), to request a review by the Cor-
22 poration and to furnish affidavits and other docu-
23 mentary evidence in support of the request, and

24 (2) a written decision and the specific reasons
25 therefor at the earliest practicable date.

1 (b) PROCEDURES.—Except as otherwise provided in
2 subsection (a), in reviewing initial determinations regard-
3 ing applications for annuities under this Act, the Corpora-
4 tion shall follow the procedures prescribed by the Corpora-
5 tion for requesting and obtaining administrative review by
6 the Corporation of determinations described in subpara-
7 graphs (A) and (B) of section 5(d)(1).

8 **SEC. 7. JUDICIAL REVIEW.**

9 (a) IN GENERAL.—Any individual, after any final de-
10 cision made under section 6, irrespective of the amount
11 in controversy, may obtain judicial review of the decision
12 by a civil action commenced under this section within 180
13 days after the mailing to the individual of notice of such
14 decision or within such further time as the Corporation
15 may allow.

16 (b) VENUE.—Any action commenced under this sec-
17 tion shall be brought in the district court of the United
18 States for the judicial district in which the plaintiff resides
19 or in the United States District Court for the District of
20 Columbia.

21 (c) RECORD.—As part of any answer by the Corpora-
22 tion, the Corporation shall file a certified copy of the tran-
23 script of the record, including the evidence upon which the
24 findings and decision complained of are based.

1 (d) JUDGMENT.—The court shall enter, upon the
2 pleadings and transcript of the record a judgment affirm-
3 ing, modifying, or reversing the decision, with or without
4 remanding the case for a rehearing.

5 (e) REMANDED CASES.—

6 (1) AUTHORITY TO REMAND TO THE CORPORA-
7 TION.—The court shall, on the motion of the Cor-
8 poration made before the Corporation files its an-
9 swer, remand the case to the Corporation for further
10 action by the Corporation. The court may, at any
11 time, on good cause shown, order additional evidence
12 to be taken before the Corporation.

13 (2) RECONSIDERATION ON REMAND.—The Cor-
14 poration shall, after the case is remanded, and after
15 hearing such additional evidence if so ordered—

16 (A) modify or affirm the earlier findings of
17 fact or decision, or both, under section 6, and

18 (B) file with the court any such additional
19 and modified findings of fact and decision, and
20 a transcript of the additional record and testi-
21 mony upon which the Corporation's action in
22 modifying or affirming was based.

23 (f) FINAL JUDGMENT.—The judgment of the court
24 shall be final except that it shall be subject to review in
25 the same manner as a judgment in other civil actions.

1 **SEC. 8. PAYMENT OF ANNUITIES.**

2 (a) FORMS OF PAYMENT.—

3 (1) YEARLY PAYMENTS.—Each annuity payable
4 under this Act shall be payable as an annual
5 amount.

6 (2) RETROACTIVE LUMP-SUM PAYMENTS.—Any
7 individual whose claim for an annuity under this Act
8 is approved after the date on which the annuity com-
9 mences under subsection (a)(2) or (b)(2) of section
10 3 shall be paid the total amount of the annuity pay-
11 ments for periods before the date on which the claim
12 is approved in the form of a lump-sum payment.

13 (b) CASES OF INCOMPETENCY.—Payment due an in-
14 dividual mentally incompetent or under other legal disabil-
15 ity may be made to the person who is constituted guardian
16 or other fiduciary by the law of the State of residence of
17 the claimant or is otherwise legally vested with the care
18 of the claimant or the claimant's estate. If a guardian or
19 other fiduciary of the individual under legal disability has
20 not been appointed under the law of the State of residence
21 of the claimant, payment may be made to any person who
22 is responsible for the care of the claimant, and the pay-
23 ment bars recovery by any other person.

24 (c) DIVORCES, ETC.—

25 (1) ALTERNATIVE PAYEES.—Payments under
26 this Act which would otherwise be made to a person

1 under this Act shall be made (in whole or in part)
2 to another person if and to the extent expressly pro-
3 vided for in the terms of any court decree of divorce,
4 annulment, or legal separation, or the terms of any
5 court order or court-approved property settlement
6 agreement incident to any court decree of divorce,
7 annulment, or legal separation. Any payment under
8 this paragraph to a person bars recovery by any
9 other person.

10 (2) NOTIFICATION REQUIREMENTS.—Para-
11 graph (1) shall only apply to payments made by the
12 Corporation under this Act after the date of receipt
13 by the Corporation of written notification of such de-
14 cree, order, or agreement, and such additional infor-
15 mation and documentation as the Corporation may
16 prescribe.

17 (3) COURT.—As used in this subsection, the
18 term “court” means any court of any State.

19 (d) INALIENABILITY.—Amounts payable under this
20 Act are not assignable, either in law or equity, or subject
21 to execution, levy, attachment, garnishment, or other legal
22 process, except as otherwise may be provided by Federal
23 law.

24 (e) FORGIVENESS.—Recovery of payments under this
25 Act may not be made from an individual in any case in

1 which the Corporation determines that the individual is
2 without fault and recovery would be against equity and
3 good conscience.

4 **SEC. 9. INTERAGENCY COORDINATION AND COOPERATION.**

5 (a) IN GENERAL.—The Corporation may make such
6 arrangements or agreements with other departments,
7 agencies, or establishments of the United States for co-
8 operation or mutual assistance in the performance of their
9 respective functions under this Act as are necessary and
10 appropriate to avoid unnecessary expense and duplication
11 of functions.

12 (b) USE OF FACILITIES.—The Corporation may use,
13 as appropriate, on a reimbursable or other basis, the facili-
14 ties or services of any department, agency, or establish-
15 ment of the United States or of any State or political sub-
16 division thereof, including the services of any of its em-
17 ployees, with the lawful consent of such department, agen-
18 cy, or establishment.

19 (c) COOPERATION.—

20 (1) IN GENERAL.—Each department, agency, or
21 establishment of the United States shall cooperate
22 with the Corporation and, to the extent necessary
23 and appropriate, provide such information and facili-
24 ties as the Corporation may request for its assist-

1 ance in the performance of the Corporation's func-
2 tions under this Act.

3 (2) AVAILABILITY OF RECORDS FROM THE SEC-
4 RETARY OF HEALTH AND HUMAN SERVICES.—The
5 Secretary of Health and Human Services shall pro-
6 vide the Corporation with such records, determined
7 by the Corporation to be necessary to carry out the
8 purposes of this Act, as the Corporation may re-
9 quest.

10 (3) AVAILABILITY OF CONFIDENTIAL TAX RE-
11 TURNS AND RETURN INFORMATION.—Section
12 6103(l) of the Internal Revenue Code of 1986 (relat-
13 ing to use of returns and return information for pur-
14 poses other than tax administration) is amended by
15 adding at the end of paragraph (2) the following
16 new sentence: “Returns and return information shall
17 be open to inspection by or disclosure to officers and
18 employees of the Corporation whose official duties
19 require such inspection or disclosure for the purpose
20 of, but only to the extent necessary in, considering
21 such returns and return information pursuant to
22 section 5(c)(1) of the Pension Restoration Act of
23 1993, except that such inspection or disclosure shall
24 be permitted only upon written request which sets
25 forth the specific reason or reasons why such inspec-

1 tion or disclosure is necessary and which is signed
2 by the head of the bureau or office of the Corpora-
3 tion requesting the inspection or disclosure.”.

4 **SEC. 10. REGULATIONS.**

5 The Corporation shall, before the effective date set
6 forth in section 12, prescribe the initial regulations nec-
7 essary to carry out the provisions of this Act. Regulations
8 under this Act shall be prescribed by the Corporation in
9 consultation, as appropriate, with the Secretary of the
10 Treasury and the Secretary of Health and Human
11 Services.

12 **SEC. 11. PROGRAM FUNDING.**

13 (a) PAYMENT.—The Corporation shall use moneys
14 from the appropriate revolving funds established under
15 section 4005 of the Employee Retirement Income Security
16 Act of 1974 (29 U.S.C. 1305) to carry out its functions
17 under this Act.

18 (b) TRANSFERS FROM TRUST FUNDS.—The Cor-
19 poration shall transfer to the revolving funds described in
20 subsection (a) from the trust funds consisting of assets
21 of terminated plans and employer liability payments
22 amounts equal to the amounts needed to carry out its
23 functions under this Act.

1 **SEC. 12. EFFECTIVE DATE.**

2 (a) GENERAL RULE.—Except as provided in sub-
3 section (b), the provisions of this Act shall take effect 60
4 days after the date of the enactment of this Act.

5 (b) SPECIAL RULE.—The provisions of sections 10
6 and 11 shall take effect on the date of the enactment of
7 this Act.

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